

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRB

HILBERT EDWARD SCHOENINGER &)	
JANIS H. SCHOENINGER,)	
)	
Petitioners,)	
)	
v.)	Docket No. 16875-14S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case for redetermination of a deficiency for tax year 2011 is before the Court on respondent's Motion For Summary Judgment, filed February 26, 2015. Petitioners filed an Objection to respondent's motion on March 25, 2015. Thereafter, pursuant to an Order dated March 26, 2015, respondent filed a Response on April 8, 2015. Most recently, on August 19, 2015, the matter was assigned to the undersigned.

Background

Petitioners timely filed their 2011 Federal income tax return. On December 9, 2013, respondent sent petitioners a Notice CP2000, which proposed a deficiency of \$3,612 and interest of \$191, for a total due of \$3,803. Presumably in response to the Notice CP2000, on or about February 27, 2014, petitioners remitted a check in the amount of \$3,803 to the Internal Revenue Service.¹ On April 7, 2014,

¹ Respondent, in his Motion For Summary Judgment, states at paragraph 10 that "On February 27, 2014, petitioners made a payment of \$3,803, paying the deficiency of \$3,612, plus interest." Petitioners, in their Objection to respondent's motion, state on "Page 2 of 4" that they "paid the IRS the added tax and interest penalty in the amount of \$3,803.00, our check number 1174 on February 23, 2014." Presumably respondent cashed petitioners' check and applied the proceeds to their account.

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respondent issued to petitioners a notice of deficiency determining a deficiency of \$3,612 for 2011. Petitioners timely filed a petition, disputing substantively respondent's underlying determination.

Discussion

In a case seeking the redetermination of a deficiency, the jurisdiction of the Court depends, in part, on the issuance by the Commissioner of a valid notice of deficiency. Rule 13(a), Tax Court Rules of Practice and Procedure; Frieling v. Commissioner, 81 T.C. 42, 46 (1983). However, if a deficiency is paid in full by the taxpayer before a notice of deficiency is issued, this Court and others have held that there is no deficiency, such that the notice of deficiency is invalid and the Tax Court lacks jurisdiction. See Bendheim v. Commissioner, 214 F.2d 26 (2d Cir. 1954); McConkey v. Commissioner, 199 F.2d 892 (4th Cir. 1952); Estate of Crawford v. Commissioner, 46 T.C. 262 (1966); Walsh v. Commissioner, 21 T.C. 1063 (1954); Anderson v. Commissioner, 11 T.C. 841 (1948); see also Grubart v. Commissioner, T.C. Memo. 1981-101, aff'd without published opinion, 685 F.2d 424 (2d Cir. 1982).

The principal question that the Court must answer in deciding whether jurisdiction is present is whether petitioners' remittance to respondent was a payment or a deposit. See Bedrosian v. Commissioner, T.C. Memo. 2007-376; aff'd, 358 Fed. Appx. 868 (9th Cir. 2009). If petitioners' remittance was a payment, then the Court would appear to lack jurisdiction for want of a valid notice of deficiency. If petitioners' remittance was a deposit, then the Court would appear to have jurisdiction.

Generally, payments are made to satisfy tax liabilities. I.R.M. 8.7.17.2.3(2)(B). Payments are applied against outstanding liabilities for taxes, penalties, or interest, and are posted to the taxpayer's account as a payment upon receipt. Rev. Proc. 2005-18, sec. 4.01(2), 2005-1 C.B. 798, 800. Payments are taken into account by the Commissioner in determining the existence of a deficiency. *Id.* On the other hand, deposits are set aside "in special suspense accounts established for depositing money received," Rosenman v. United States, 323 U.S. 658, 662 (1945), and suspend the running of interest on potential underpayments, *see* I.R.C. sec. 6603. If making a deposit, the taxpayer generally does not agree with the proposed liability and wants to continue protesting the liability. I.R.M. 8.7.17.2.3(2)(A).

Rev. Proc. 2005-18, 2005-1 C.B. 798, gives guidance in determining whether a remittance is considered a payment or a deposit. According to Rev. Proc. 2005-18, sec. 4.01(1), 2005-1 C.B. at 799, the taxpayer may make a deposit by remitting to the IRS a check or money order, accompanied by a written statement designating the remittance as a deposit. However, if the remittance is undesignated, i.e., is not designated as a deposit, other facts and circumstances help determine whether it is a payment or a deposit. Rev. Proc. 2005-18, secs. 4.01(2), 4.03, 4.04, 2005-1 C.B. at 799-800.

If an undesignated remittance is made in the full amount of a proposed liability, such as an amount proposed in a revenue agent's or examiner's report, the undesignated remittance will be treated as a payment of tax. Rev. Proc. 2005-18, sec. 4.03, 2005-1 C.B. at 799. However, any undesignated remittance that is made while the taxpayer is under examination, but before a liability is proposed in writing (e.g., before the issuance of a revenue agent's or examiner's report), will be treated by the Service as a deposit if the taxpayer has no outstanding liabilities. Rev. Proc. 2005-18, sec. 4.04(1), 2005-1 C.B. at 800.

Respondent's aforementioned Motion For Summary Judgment does not address the Court's jurisdiction in this case, nor do petitioners in their Objection to respondent's motion. Accordingly, the Court wishes to solicit the parties' views before proceeding further.

Upon due consideration, it is

ORDERED that, on or before September 30, 2015, petitioners shall file a response to this Order (1) expressing petitioners' regarding the jurisdictional matter discussed in the preamble of this ORDER; (2) stating whether the

remittance was designated as a payment or a deposit and attaching a copy of the check and any letter, form, or other writing from petitioners that accompanied the check; or (3) if no designation was made at the time of the remittance, stating whether the remittance was intended to be a payment of their 2011 tax liability or intended to be a deposit, and attaching copies of any communications between petitioners and respondent that would tend to objectively demonstrate petitioners' intent. It is further

ORDERED that, on or before September 30, 2015, respondent shall file a response to this Order (1) expressing respondent's views regarding the jurisdictional matter discussed in the preamble of this ORDER; (2) stating whether respondent treated petitioners' remittance as a payment or as a deposit and attaching a plain-English transcript of petitioners' 2011 account; and (3) attaching copies of any communications between petitioners and respondent prior to the issuance of the notice of deficiency that would tend to show petitioners' intent that the remittance be treated as a payment or as a deposit.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
August 27, 2015